

**STORAGE NAME:** h0959z.lgva.doc  
**DATE:** July 1, 2002

**\*\*AS PASSED BY THE LEGISLATURE\*\***  
**CHAPTER #:** 2002-353, Laws of Florida

**HOUSE OF REPRESENTATIVES**

**LOCAL GOVERNMENT & VETERANS AFFAIRS**  
**FINAL ANALYSIS- LOCAL LEGISLATION**

**BILL #:** HB 959, 1st ENG  
**RELATING TO:** South Daytona & Port Orange  
**SPONSOR(S):** Representative Kosmas and others

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
- (2) COUNCIL FOR SMARTER GOVERNMENT (W/D)
- (3)
- (4)
- (5)

---

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill authorizes the involuntary annexation of parcels that are either totally surrounded by the City of Port Orange or are totally surrounded by both the City of Port Orange and the City of South Daytona.

The Economic Impact Statements filed by each of the municipalities indicate no impact on the State budget.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

**MUNICIPAL ANNEXATION PROCEDURES**

***Constitutional/Statutory Provisions***

Section 2(c), article VIII of the State Constitution authorizes the Legislature to annex unincorporated property into a municipality by special act. It also authorizes the Legislature to establish procedures in general law for the annexation of property by local action. Miami-Dade County, however, has exclusive jurisdiction over its municipal annexations under sections 11(1)(c), (5), and (6), article VIII of the 1885 State Constitution, as adopted by reference in section 6(e), article VIII of the State Constitution.

The Legislature established local annexation procedures by general law in 1974, with the enactment of chapter 171, Florida Statutes. Chapter 171, Florida Statutes, named the "Municipal Annexation or Contraction Act," describes the ways that property can be annexed or de-annexed by cities without passage of an act by the Legislature. There are two types of annexations in Florida, voluntary and involuntary. With voluntary annexations, all property owners in the area proposed for annexation formally seek the annexation by petition. For an involuntary annexation to occur, at least a majority of the electors in the area proposed for annexation must vote in favor of the annexation. In addition, for the annexation to be valid under Chapter 171, Florida Statutes, the annexation must take place within the boundaries of a single county.

There is a twofold purpose of the Florida annexation laws: 1) to set forth local annexation/contraction procedures, and 2) to establish prerequisites for achieving the legislative goals of sound urban development, uniform legislative standards, and efficient provision of urban services.

***Statutory Requirements That Must Be Met Before Annexation May Occur***

Before local annexation procedures may begin, the governing body of the annexing municipality must prepare a report containing the city's plans for providing urban services to the proposed area to be annexed. A copy of the report must be filed with the board of county commissioners where the municipality is located. This report must include appropriate maps, timetables, and financing methodologies. It must certify that the area proposed to be annexed is appropriate for annexation because it meets the following standards and requirements:

1. The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality. This means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. The specified exceptions are where the area is separated from the city's boundary by a publicly owned county park, right-of-way, or body of water.
2. The area to be annexed must be reasonably compact.
3. No part of the area to be annexed may fall within the boundary of another municipality.
4. The majority of the land to be annexed must be developed for urban purposes. Urban purposes are defined as:
  - Having a resident population of at least two persons per acre;
  - If 60 percent of the subdivided lots are one acre or less, having a density of one person (resident) per acre;
  - Having at least 60 percent of the subdivided lots used for urban purposes; or
  - Having at least 60 percent of the total urban residential acreage divided into lots of 5 acres or less.
5. Alternatively, if the proposed area is not developed for urban purposes, it can either border at least 60 percent of a developed area, or provide a necessary bridge between two urban areas.

Annexed areas are declared to be subject to taxation (and existing indebtedness) for the current year on the effective date of the annexation, unless the annexation takes place after the municipal governing body levies such tax for that year. In the case of municipal contractions, the city and county must reach agreement on the transfer of indebtedness or property--the amount to be assumed, its fair value, and the manner of transfer and financing.

### ***Types of Annexations***

#### **Voluntary Annexation**

If the property owners of a particular unincorporated area desire annexation into a contiguous municipality, they can initiate voluntary annexation proceedings. The following procedures govern voluntary annexations in every county, except for those counties with charters providing an exclusive method for municipal annexation:

1. Submission to the municipal governing body of a petition seeking annexation, signed by all property owners in the area proposed to be annexed.
2. Adoption of an ordinance by the governing body of the annexing municipality to annex the property after publication of notice at least once a week for 2 consecutive weeks, setting forth the proposed ordinance in full.

In addition, the annexation must not create enclaves. An enclave is:

(a) Any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or

(b) Any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

Upon publishing notice of the ordinance, the governing body of the municipality must provide a copy to the board of county commissioners of the county where the municipality is located.

### Involuntary Annexations

A municipality may annex property where the property owners have not petitioned for annexation pursuant to section 171.0413, Florida Statutes. This process is called involuntary annexation. In general, the requirements for an involuntary annexation are:

1. The adoption of an annexation ordinance of a "reasonably compact" area by the annexing municipality's governing body.
2. Prior to the adoption of an annexation ordinance, the governing body of the municipality must hold at least two advertised public hearings, with the first meeting being held on a weekday at least seven days after the first advertisement and the second meeting being held on a weekday at least five days after the first advertisement. (This new requirement was passed by the 1999 Legislature).
3. Submission of the ordinance to a vote of the registered electors of the area proposed to be annexed once the governing body has adopted the ordinance. The registered electors of the annexing municipality may vote on the annexation if the governing body chooses to submit it to a vote. However, this vote is not required.

In 1999, the Florida Legislature removed the requirement of a dual referendum in specific circumstances. Previously, in addition to a vote by the electors in the proposed annexed area, the annexation ordinance was submitted to a separate vote of the registered electors of the annexing municipality if the total area annexed by a municipality during any one calendar year period cumulatively exceeded more than five percent of the total land area of the municipality or cumulatively exceeded more than five percent of the municipal population. The holding of a dual referendum is now at the discretion of the governing body of the annexing municipality. There is no requirement that the electors in the municipality approve an annexation ordinance regardless of the cumulative effect of such annexation.

If there is a majority vote in favor of annexation in the area proposed to be annexed, the area becomes a part of the city. If there is no majority vote, that area cannot be made the subject of another annexation proposal for two years from the date of the referendum.

### Annexation of Areas With No Registered Voters

If an area proposed to be annexed does not have any registered electors on the date a local government adopts an annexation ordinance, obviously an election within the area cannot take place. In this case, the area may not be annexed unless the owners of more than 50 percent of the parcels of land consent to the annexation. The required property owner approval must be obtained by the parties proposing the annexation prior to the final adoption of the ordinance. In addition, the annexing municipality may submit the ordinance to a vote of the registered electors of the annexing

municipality. The annexation ordinance is effective upon becoming a law or as otherwise provided in the ordinance.

If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations, or legal entities that are not registered electors, the area may not be annexed unless the owners of more than 50 percent of the land in the area consent to such annexation. The parties proposing the annexation prior to the referendum to be held on the annexation must obtain such consent.

#### *Annexation of Enclaves*

With the passage of chapter 93-206, Laws of Florida, (now found in section 171.046, Florida Statutes), the Legislature recognized that enclaves can create significant problems in planning, growth management, and service delivery. An enclave is (a) any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or (b) any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

In 1993, the Legislature recognized that enclaves can create significant problems in planning, growth management, and service delivery. The intent of the legislation was to make it easier to eliminate enclaves of small land areas. A separate process for annexing enclaves of 10 acres or less was created. Using this process, a municipality may annex an enclave by interlocal agreement with the county having jurisdiction of the enclave. It may also annex an enclave with fewer than 25 registered voters by municipal ordinance, when the annexation is approved in a referendum by at least 60 percent of the voters in the enclave. These procedures do not apply to undeveloped or unimproved real property.

#### *Annexation by Special Act*

Subsection 171.044(4), Florida Statutes, provides that the procedures for voluntary annexation shall be "supplemental to any other procedure provided by general law or special law." There are a number of special annexation laws that exist in Florida, and hence special laws should always be checked prior to beginning annexation procedures. The Legislature may allow municipalities to annex property by passage of a special act and are empowered to waive any and all statutory requirements.

#### *Annexation by Charter*

Also provided in subsection 171.044(4), Florida Statutes, voluntary annexation procedures do not apply to municipalities and counties with charters that provide for an exclusive method of municipal annexation.

#### **Effect of Annexation on an Area**

Immediately upon being annexed, an area becomes subject to all laws, ordinances, and regulations applicable to other city residents. An exception is that applicable county land use and zoning regulations continue in effect until the annexing municipality rezones the area. Also, the county land use plan, and zoning or subdivision regulations of the unincorporated area remain in effect (after the annexation has been approved) until the annexing municipality adopts a local comprehensive plan amendment to include the new area. In contractions, excluded territory is immediately subject to laws, ordinances, and regulations in effect in the county.

Affected persons who believe they will suffer material injury because of the failure of the city to comply with annexation or contraction laws as they apply to their property can appeal the annexation ordinance. They may file a petition within 30 days following the passage of the ordinance with the circuit court for the county in which the municipality is located seeking the court's review by certiorari. If the appeal is won, the petitioner is entitled to reasonable costs and attorney's fees.

Finally, any changes in municipal boundaries require revision of the boundary section of the municipality's charter. Such changes must be filed as a charter revision with the Department of State within 30 days of the annexation or contraction.

### **Solid Waste Collection**

Florida law provides for continuing any exclusive franchised solid waste collection services that have been in effect for six months or longer. They are to continue to the newly annexed area for either 5 years or for the remainder of the franchise term, whichever is shorter. The municipality may allow the franchisee to continue servicing the area under the present franchise agreements, or the city may terminate the agreements if the franchisee does not agree to comply with certain statutory provisions relating to the quality of services or the costs of providing such services. In 2000, the Legislature adopted a provision which provides that a solid waste collection contract in effect at least 6 months prior to the annexation, may continue to provide services to the annexed area for 5 years or the remainder of the contract, whichever is shorter. The solid waste collection provider must provide written evidence of the contract duration, excluding any automatic renewals or "ever-green" provisions, within a reasonable time of a written request. This does not apply to single-family residential properties in specified enclaves.

### **Independent Special Districts**

In 2000, the Legislature created section 171.093, Florida Statutes, to address municipal annexation of property within the boundary of an independent special district that levies ad valorem taxes. It is an effort to isolate and provide certain limited protections to independent special districts from annexation activity in areas affecting them. Oftentimes, independent special districts receive no financial protection from annexing municipalities, even though the district continues to be liable for its debts. As an independent special district's tax base continues to decrease due to annexations and abundant loss of territory, the district may become economically inefficient and unstable. A situation may arise where an independent special district no longer has any property within its boundaries due to annexations. This law now provides a method to allow independent special districts to factor the decreased property base into its budget, while at the same time not restricting municipalities' ability to annex.

An orderly transition of special district service responsibilities to an annexing municipality in an equitable manner is provided for. Upon annexation of property within a special district's boundaries, a municipality has the option to elect the assumption of the special service responsibilities. If the municipality elects to assume the responsibilities, the municipality and special district may enter into an interlocal agreement to address the transition. If no interlocal agreement can be reached, then the district remains the service provider in the annexed area for a period of four years. During this time, the municipality pays the district an amount equal to the ad valorem taxes or assessment that would have been collected had the property remained in the district. At the end of the four years, or other agreed upon extension, the municipality and district must enter into an agreement regarding the transfer of district property located within the municipality. If no agreement is reached, then the parties proceed to circuit court. District service and capital

expenditures within the annexed area must be rationally related to the annexed area's service needs and that service and capital expenditure must also be related to received revenues. In addition, a district is prohibited from having a capital expenditure of more than \$25,000 for use primarily within the annexed area without the express consent of the municipality.

If the municipality does not elect to assume district responsibilities, the district continues providing service to the annexed area. In addition, the annexed area remains within the district's boundaries. Finally, the district is allowed to continue assessing user charges and impact fees within the annexed area while it remains the service provider. However, these annexation provisions do not apply to community development districts and water management districts.

### **Proposed Annexations by the City of South Daytona and City of Port Orange**

On November 13, 2001, the City of South Daytona adopted Resolution No. 01-27, and the City of Port Orange adopted Resolution No. 01-64, each supporting a local bill to redefine the boundaries of South Daytona and Port Orange to incorporate parcels of unincorporated properties, lying in, between, and surrounded by, these two municipalities. On November 29, 2001, Volusia County adopted Resolution No. 2201-224 to the same effect. All three resolutions include virtually the same language and represent that there exist several enclaves of unincorporated land lying within the corporate limits of the City of Port Orange that are greater than 10 acres. Additionally, the resolutions indicate that the parcels lying in between the two municipalities are all less than 10 acres each. Pursuant to general law, neither of these two scenarios provide the factual basis to authorize involuntary annexations as the enclaves are either greater than 10 acres, or are not surrounded on all sides by a single municipality. However, according to a February 8, 2002, telephone conversation with the City Manager of the City of Port Orange, the County has difficulty fulfilling its law enforcement and code enforcement responsibilities in these areas that are segregated from other unincorporated areas by virtue of the fact that they are completely surrounded by the two municipalities. **(See "OTHER COMMENTS")**

#### **C. EFFECT OF PROPOSED CHANGES:**

This bill provides for the annexations of legally described parcels into the City of South Daytona and into the City of Port Orange.

The bill provides for the involuntary annexation of unincorporated areas that are factually unique. The unique factual nature is not addressed by existing general law related to annexation. As such, the bill appears to provide an exemption from general law. Section 4 of the bill as filed, created one exemption from general law as it provides for the authority to collect franchise fees and utility taxes notwithstanding general law to the contrary. Section 4. was removed by amendment adopted on February 21, 2002, by the Committee on Local Government & Veterans Affairs. However, the annexation provisions of this bill are outside of the provisions of chapter 171, Florida Statutes, thus continuing to subject the bill to the provisions of House Rule 5.6(b).

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill.

#### **D. SECTION-BY-SECTION ANALYSIS:**

Section 1. Provides for the annexation of legally described parcels into the City of South Daytona.

Section 2. Provides for the annexation of legally described parcels into the City of Port Orange.

Section 3. Provides that the areas legally described in ss. 1 and 2 shall be subject to all laws, ordinances, and regulations in force in the respective annexing municipality. Additionally, the Volusia County land use plan and regulations shall continue in force relative to any parcel subject to those provisions at the time of annexation until the annexing municipality has adopted a comprehensive plan amendment to include the described parcel(s). The parcels are also subject to ad valorem taxes and debts of the respective annexing municipality upon the effective date of the bill.

Section 4. Provides an effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN?

November 24, 2001

WHERE?

*The News-Journal*, Daytona Beach, Volusia County.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The City Manager, City of Port Orange, stated in a February 8, 2002, telephone conversation that the areas proposed for annexation have long been problematic for both municipalities and the County in terms of law enforcement, code enforcement and delivery of other services by the County. As a result, the municipalities and the County supported this proposal for consideration by the Legislative Delegation.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Local Government & Veterans Affairs adopted two amendments at its meeting on February 21, 2002. The first amendment changed the effective date to October 1, 2002, to conform to the local governments' fiscal years. The second amendment deleted s. 4 of the bill as filed removing

**STORAGE NAME:** h0959z.lgva.doc

**DATE:** July 1, 2002

**PAGE:** 9

language that provided a direct exemption from general law regarding the authority to collect franchise fees and utility taxes. The second amendment conformed the bill with the Senate bill.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Joan Highsmith-Smith

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:**

Prepared by:

Staff Director:

Andrew S. Grayson, Esq.

Joan Highsmith-Smith